

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

MIKE AVILA, Trustee, et al.,)
Plaintiffs,)
vs.)
BRONGER MASONRY, INC.,)
Defendant.)
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1:10-cv-798-LJM-TAB

ORDER ON PLAINTIFFS' MOTION FOR LEAVE TO FILE AMENDED COMPLAINT

Plaintiffs seek leave to file an amended complaint adding Modern Masonry, Inc. as a defendant. [Docket No. 13.] Plaintiffs allege that Modern Masonry is Defendant Bronger Masonry's successor or alter ego. [Docket No. 13, Ex. 1 at ¶ 7.] Bronger opposes amendment, arguing that Plaintiffs should have moved to add a party under Federal Rule of Civil Procedure 19 or 20, and that Plaintiffs' proposed amendment is futile. [Docket No. 17 at 2.]

As to Bronger's procedural argument, Bronger does not explain the significance of Plaintiffs' reliance on Rule 15 instead of Rules 19 or 20, and there may be none. *See* 6 Charles Alan Wright, et al., *Federal Practice & Procedure* § 1474 (3d ed. 2010) ("Finally, a party may make a Rule 15(a) amendment to add, substitute, or drop parties to the action. . . . [T]he same basic standard for adding or dropping a party will apply whether the pleader moves under Rule 15(a) or Rule 21.").

Bronger next argues that the proposed amendments are futile because any alter ego liability would fall on it. But Plaintiffs respond with authority stating that a suit against an alter ego is permissible. [Docket No. 18 at 3–4 (citing *Exxon Mobil Corp. v. Freeman Holdings, LLC*, No. CV-09-0390-EFS, 2010 WL 4537014 (E.D. Wash 2010)).] Futility at the amendment of the

pleadings stage is a high hurdle that Bronger's arguments fail to clear. *Eli Lilly & Co. v. Wockhardt Ltd.*, No. 1:08-cv-1547-TWP-TAB, 2010 WL 5476743, at *2 (S.D. Ind. Dec. 30, 2010). The Court therefore grants Plaintiffs' motion for leave to file amended complaint [Docket No. 13], and the amended complaint attached to their motion [Docket No. 13-1] shall be deemed filed as of today's date.

Dated: 05/09/2011

7-13L

Tim A. Baker
United States Magistrate Judge
Southern District of Indiana

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